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WHEN ONE SCHOOL DISTRICT IS TRANSFERRED TO ANOTHER, THE TAX LEVY OF THE RECEIVING DISTRICT FOR SCHOOL PURPOSES INSIDE THE TEN-MILL LIMITATION WOULD APPLY TO THE ENTIRE NEWLY CONSOLIDATED DISTRICT UNLESS—§3311.231, R.C.

SYLLABUS:

When one school district is transferred to another pursuant to Section 3311.231, Revised Code, the tax levy of the receiving district for school purposes inside the ten-mill limitation would apply to the entire newly consolidated district unless the application of such rate would force an infringement of the ten-mill limitation of Article XII, Section 2 of the Constitution of Ohio, when, if such were the result, the inside tax levy for the newly consolidated school district would be the maximum tax levy which would allow for inside levies of no more than ten mills throughout the entire consolidated school district.

Columbus, Ohio, May 24, 1960

Hon. J. B. Yanity, Jr., Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“I write for an interpretation of Revised Code Section 3317.02 as effective Jan. 1, 1960, and particularly in regard to the third paragraph from the end of said section as it relates to the following set of facts:

“The transfer of the territory of Ward Township School District of Hocking County, Ohio, to the Buchtel-York Local School District of Athens County, Ohio, is in process under the provisions of Revised Code Section 3311.231, said transfer if approved by recipient, to be effective July 1, 1960. Buchtel-York Local School District receives only minimum state aid since its tax levy for current school operation is only 9 mills. Ward Township School District has a tax levy of over 10 mills for current school operation and thus qualifies for more than minimum state aid.

“The paragraph of Section 3317.02 referred to above seems to govern amount of state aid in this situation, and the question is would the Buchtel-York Local School District get state aid

in the amount they now get in addition to what Ward Township School District is now receiving for the next three years if the transfer is approved or would the district, after the transfer, only get minimum state aid since the receiving district only has a 9 mill levy for current school operation?

“In addition to the above I would like an opinion on the following:

“Ward Township School District has a 3.5 mills levy within the 10 mill limitation for current operating expenses, Buchtel-York Local School District has a 3.7 mill levy within the 10 mill limitation for current operating expenses. As indicated previously, Ward Township is attempting to transfer to Buchtel-York. If the transfer is accepted, which rate would apply to the taxable property in the combined school districts?”

The first question you ask has been answered in Opinion No. 1303, Opinions of the Attorney General for 1960, released April 25, 1960, to E. E. Holt, Superintendent of Public Instruction and I refer you to that opinion for answer.

Your second question relates to which of the two operating levies within the ten-mill limitation becomes the effective operating levy for an enlarged school district when another school district is transferred to it pursuant to Section 3311.231, Revised Code. Although nowhere in the Revised Code do I find a specific answer to your query, provision is made in Section 3311.231, Revised Code, for the abolishment of the board of education of the transferred district. This provision reads as follows:

“* * *

“If an entire district is transferred the board of education of such district is thereby abolished or if a member of the board of education lives in that part of a school district transferred the member becomes a nonresident of the school district from which the territory was transferred and he ceases to be a member of the board of education of such district.

“The legal title of all property of the board of education in the territory transferred shall become vested in the board of education of the school district to which such territory is transferred.

“* * *”

It may be seen from this statute that where an entire school district is transferred to an adjoining school district, the transferred school district loses its separate identity for all purposes. From this it would

logically follow that the tax levy for school purposes within the ten-mill limitation applicable to the transferred territory would be that of the receiving school district. Except for the exception I note below I am of the opinion that this is the correct answer to your question.

I observe from your letter, however, that the transferred territory had a tax levy inside the ten-mill limitation for school purposes of 3.5 mills, while the receiving district has an inside school levy of 3.7 mills. It would be logical to assume that all of the ten mills inside the constitutional limitation are currently in use for county, township or school district purposes. If it is true that in the transferred territory there are currently tax levies inside the ten-mill limitation to the extent of 6.5 mills levied by political subdivisions other than the school district, the transfer to the receiving district could have no effect on these other inside tax levies. Since the receiving district has inside levy for school purposes of 3.7 mills that would leave only 6.3 mills inside the ten-mill limitation for township or county use.

In view of the constitutional requirement contained in Article XII, Section 2, providing that land and improvements thereon shall be taxed by uniform rule according to value, it follows that the tax levied for school purposes by the board of education within the ten-mill limitation must be the same throughout the entire newly consolidated school district. Under the circumstances present in this case, it would seem that the only possible remedy for this problem would be a selection by the board of education of the receiving school district of a tax levy for school purposes within the ten-mill limitation which would avoid any possible infringement on the ten-mill limitation in the school district transferred, which district remains in its original township and county for other than school purposes. If it should be true that there exists in the transferred school district tax levies inside the ten-mill limitation of 6.5 mills for county and township purposes, it would necessarily follow that the receiving school district would be forced to select an inside tax levy for school purposes of not more than 3.5 mills for the entire consolidated school district.

It is, therefore, my opinion and you are accordingly advised that when one school district is transferred to another pursuant to Section 3311.231, Revised Code, the tax levy of the receiving district for school purposes inside the ten-mill limitation would apply to the entire newly

consolidated district unless the application of such rate would force an infringement of the ten-mill limitation of Article XII, Section 2 of the Constitution of Ohio, when, if such were the result, the inside tax levy for the newly consolidated school district would be the maximum tax levy which would allow for inside levies of no more than ten mills throughout the entire consolidated school district.

Respectfully,

MARK McELROY
Attorney General